

NTSB Order No. EA-4318

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of January, 1995

Docket SE-13390

sections 91.119(b) and 91.13(a) of the Federal Aviation Regulations, "FAR," 14 CFR Part 91.² However, because he concluded that one of the allegations made in support of the charges had not been proved, the law judge reduced the sanction sought by the Administrator from a suspension of 60 days to one of 30. The Administrator appeals the reduction in the sanction sought in his order, which served as the complaint in this matter. For the reasons discussed below, the appeal will be granted and the 60-day suspension reinstated.³

The law judge credited the evidence supporting the allegation that respondent had operated a Cessna T210N aircraft over a congested residential area in Waukesha, Wisconsin at altitudes as low as 50 to 75 feet, in violation of the two regulations cited in the Administrator's order. He was not

²FAR sections 91.119(b) and 91.13(a) provide as follows:

§91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

* * * * *

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

§91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.*

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³Respondent has filed a reply opposing the appeal.

persuaded, however, that respondent had been shown to have committed another violation of FAR section 91.13(a) by the manner in which he had operated that aircraft during a takeoff from Waukesha Airport on the same date.⁴ Although the Administrator had made it clear in his closing argument that the takeoff charge was "much less severe" than the low flight charge and that Board precedent for the low flight allegation alone would support a suspension of at least 60 days (Tr. at pp. 63-64), the law judge, without discussion, reduced the sanction in the Administrator's order to 30 days. We agree with the Administrator that the law judge erred.

While the dismissal of one or more allegations from a complaint is a circumstance that may well result in a finding that a lower sanction than that originally sought by the Administrator should be affirmed, it does not justify an automatic or formulaic reduction in the sanction in all cases. Rather, the law judge in such instances must evaluate the seriousness of the charges he has found proved and inform his judgment on sanction by reference to precedent and such other sources as may be helpful or necessary in the interest of furthering uniformity. That was not done here.

The law judge in effect concluded that respondent had made four or five passes above "houses and other property" at a dangerously low altitude. We agree with the Administrator that a

⁴Respondent was alleged to have flown low over the runway after liftoff until reaching its end and then to have executed an abnormally steep climb.

60-day suspension for such low level flying over a congested, residential area is consistent with Board precedent⁵ and that, therefore, the rejection of the FAR section 91.13(a) charge related to the takeoff did not make a 60-day suspension inappropriate or excessive for the charges based solely on the low flight operation.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is affirmed in part and reversed in part; and
3. The 60-day suspension of respondent's commercial pilot certificate shall commence 30 days after service of this opinion and order.⁶

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

⁵See, e.g., Administrator v. Jackson, NTSB Order No. EA-3270 (1991). We note, moreover, that a 60-day sanction is the minimum sanction recommended in the Administrator's "Enforcement Sanction Guidance Table" for low flight over a congested area. See FAA Order 2150.3A, Appendix 4, p. 17.

⁶For purposes of this opinion and order, the respondent must physically surrender his certificate to an appropriate representative of the Administrator, FAR section 61.19(f).